

Conflict of Interest Duty

The duty on public bodies to take appropriate measures to prevent, identify, and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.

The Public Contracts (Scotland) Regulations 2015

“25. - (1) A contracting authority must take appropriate measures to prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.

(2) Without prejudice to the generality thereof, reference to “conflicts of interest” in paragraph (1) includes any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.”

SDS Evaluation Guidance maintains that all panel members are requested to:

“...complete and sign a **Non Disclosure / Confidentiality Agreement form**. The purpose of this is to confirm that they do not have any personal, professional or monetary interests in the quotes/tenders they are being asked to evaluate.”

The Central Procurement Team has a responsibility to ensure that all interests in a company or product should be declared by any member of the evaluation panel at the outset of the ITQ/ITT evaluation process.

Further, the regulations allow SDS to exclude suppliers/providers in the event of a conflict of interest:

“58. – (8)(e) A contracting authority may exclude an economic operator from participation in a procurement procedure where a conflict of interest exists within the meaning of regulation 25 (conflicts of interest) which cannot be effectively remedied by other less intrusive measures.”

This should be considered when looking to place smaller design or proof of concept procurements where it is possible that a larger procurement will follow. Conflict can also apply for related contracts. Procurement can assist departments who, as the intelligent customer will have a greater level of understanding of any potential conflicts.

Types of Conflict of Interest in Regulated Procurements

Authority Conflict - A Conflict of Interest arising from the circumstances of the awarding authority or its personnel (or advisers save in the context of Concession contracts); for example, because of personal relationships or financial interest.

Bidder Conflict - A situation in which a bidder is in a position of advantage when compared to other bidders by reason of prior involvement or a privileged position as regards

information. This might encompass, for example, incumbent contractors or bidders who have provided preliminary consultancy support to the awarding authority

Organisational Conflict - A situation in which, as regards the award process concerned, multiple bidders/ involved parties are part of the same corporate group raising the risk of collusion and sharing of information.

Strategic Conflict - A situation in which past performance indicates that there may be concerns about a bidder's technical and professional ability to perform a contract.

Red Flags

Audit Scotland identified the following as 'Red Flags' in the procurement process which could indicate a conflict of interest may be present:

- The person overseeing the award of a contractor has a relationship with the successful contractor, eg SDS employee awarding contract holds a post with/owns shares/has a close family or friendly relationship with someone in the winning provider/supplier.
- Overuse of single tender applications.
- One supplier often favoured.
- No records of why supplier was appointed.
- Surprising supplier appointed.

Duty of SDS Contract Managers

The SDS Contract Management Policy requires the following transparency from all SDS Contract Managers:

“It is important that the responsible contract manager ensures that the contract management plan is a living document detailing the changes and revisions to the contract. The contract manager also requires to act on behalf of SDS as the contracting authority in representing SDS's interests. **If any potential conflicts of interest occur during the contract, they require to be highlighted to procurement as we would have already conducted NDAs as part of the procurement process.**”

Further Information

- [PLA Working Group on Conflicts of Interest](#)
- [Audit Scotland](#)

If you require any further information, please get in touch with procurement@sds.co.uk